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UNITED PLANTATIONS BHD v. MAJLIS DAERAH SABAK BERNAM

HIGH COURT MALAYA, SHAH ALAM
WONG KIAN KHEONG J
[ORIGINATING MOTION NO: 25-52-11-2014]
B 11 MAY 2020

LOCAL GOVERNMENT: *Local authority – Local authority area – Revised valuation of land – Dispute on annual value and rate applicable to land – Part of definition of 'annual value' in s. 2 of Local Government Act 1976 applied to land* C *– Whether local authority could charge any rate on land without providing any specific service, facility or amenity to land – Whether local authority misused Local Government Act 1976 to commit fraud on landowner – Whether court could make consequential order for local authority to refund rates paid by landowner with interest – Whether revised valuation list lawful and valid*

D

STATUTORY INTERPRETATION: *Valuers, Appraisers, Estate Agents and Property Managers Act 1981 – Section 4(2) – 'shall' and 'may' – Whether wholly mandatory*

The appellant owned a piece of land which was situated within the E respondent's local authority area under s. 3(a) of the Local Government Act 1976 ('LGA'). The respondent issued a notice of revised valuation list for the appellant's land which entailed: (i) the revision of the valuation list for the appellant's land; (ii) the annual value of the appellant's land was RM168,000; and (iii) the annual rate imposed by the respondent on the appellant's land was 10% of the annual value of RM168,000. The appellant F appealed to the High Court against the value and annual rates imposed by the respondent. The High Court maintained RM168,000 as the annual value of the appellant's land and fixed the annual rate at 2% of the annual value. However, the grounds of judgment of the High Court stated that the annual rate applicable was 2.5%. The parties appealed to the Federal Court against G the said decision. The Federal Court ordered the case to be remitted to the High Court for the determination of the following questions: (i) what was the annual value of the appellant's land ('first question'); and (ii) what was the annual rate applicable to the appellant's land. The issues that arose for adjudication were: (i) which part of the definition of 'annual value' in s. 2 H of the LGA applied to the appellant's land; (ii) whether the respondent could charge any rate on the appellant's land when the respondent had not provided any specific service, facility or amenity to the appellant and/or the appellant's land; (iii) could the appellant rely on a recommendation by the Royal Commission of Enquiry on Local Authorities in the '*Report of the* I *Royal Commission of Enquiry to Investigate into the Workings of Local Authorities*

in West Malaysia' ('Athi Nahappan's Report'); (iv) had the respondent misused the LGA to commit fraud on the appellant; (v) who had the legal and evidential burden to satisfy the court regarding this appeal; and (vi) if the first question was resolved in favour of the appellant, whether the court could make a consequential order for the respondent to refund to the appellant the rates which had been paid by the appellant to the respondent with interest.

Held (resolving first question in appellant's favour):

(1) The appellant's land fell within the definition of 'holding' (any land with or without buildings thereon, which is held under a separate document of title) in s. 2 of the LGA. The appellant's land did not come within the ambit of proviso (c)(ii) to the definition of 'annual value' in s. 2 of the LGA because the appellant's land was not 'vacant' or 'unoccupied' as oil palm trees were planted on the appellant's land. It was clear that provisos (a), (b)(i) to (iii) and (c)(i), (iii) and (v) to the definition of 'annual value' in s. 2 of the LGA did not apply to the appellant's land. Proviso (d) could not be applied to the definition of 'annual value' in s. 2 of the LGA because there was no 'opinion' from the respondent's 'valuation officer' that 'there is insufficient evidence' to ascertain the 'annual value' of the appellant's land. The first part of the definition of 'annual value' in s. 2 of the LGA applied to the appellant's land ('first limb'). (paras 12-15)

(2) Section 4(2) of the Valuers, Appraisers, Estate Agents and Property Managers Act 1981 ('VAEAPM') has three parts, namely: (i) in the first part, the Director General ('DG') has a duty to carry out all the functions specified in s. 4(2)(a) to (d) of the VAEAPM for the Federal Government and State Governments. The mandatory nature of the first part is clear from Parliament's use of an imperative term 'shall'; (ii) the second part confers a discretion on the DG to carry out functions under s. 4(2) of VAEAPM for these three entities: (a) any local authority; (b) any statutory body; and (c) any body corporate in which the Federal Government or the State Governments have an interest (Government Linked Companies ('GLC')); and (iii) in the third part, the DG may carry out his functions under s. 4(2) of the VAEAPM for 'any other person' as the 'Minister' may determine. The phrase 'any other person' must mean any legal entity other than: (i) the Federal Government and State Government; and (ii) local authorities, statutory bodies and GLCs. The use of the mandatory term 'shall' in the first part by Parliament and its employment of the discretionary word 'may' in the second and third parts clearly indicates Parliament's intention to distinguish between the mandatory first part on the one hand and the directory second and third parts on the other hand. (para 18)

(3) The respondent did not have the duty under s. 4(2)(b) of the VAEAPM to obtain the DG's ascertainment of the annual value of the appellant's land, as understood in the first limb. The second part is merely a directory. The present court's construction of s. 4(2) of the VAEAPM did not prevent any local authority, including the respondent, statutory body and GLC from applying for the DG's service to ascertain the annual value of any holding within the meaning of the first limb. It was entirely up to the DG to accept such a request by a local authority, statutory body and GLC. As the respondent was not bound by s. 4(2)(b) of the VAEAPM to obtain the DG's valuation of the annual value of the appellant's land, as understood in the first limb, the court could not invoke any adverse inference under s. 114(g) of the Evidence Act 1950 ('EA') against the respondent for not obtaining such a valuation of the appellant's land by the DG. (paras 19-21)

(4) The revised valuation list had not complied with the mandatory requirement of s. 137(3) of the LGA. This was because the respondent had not prepared any new valuation list every five years or within an extended period of time as determined by the State Authority. The circumstances specified in s. 144(1) of the LGA did not apply to the revised valuation list. Furthermore, the revised valuation list was not prepared by the respondent's valuation officer under s. 144(1) of the LGA and confirmed by the respondent pursuant to s. 144(5) of the LGA. As such, the respondent could not rely on s. 144(1)(a) to (f) of the LGA to justify any amendment in the form of the revised evaluation list. Therefore, the revised valuation list was void for non-compliance with the mandatory requirement of s. 137(3) of the LGA. However, despite the illegality of the revised valuation list, the respondent was not estopped from issuing a new valuation list in accordance with s. 137(3) of the LGA. In view of the unlawful valuation list, the annual value of the appellant's land was zero. (paras 24, 25, 27, 28 & 40)

(5) The respondent relied on s. 157 of the LGA and documents adduced by the respondent to support the annual value of RM168,000 for the appellant's land. The respondent could not rely on s. 157 of the LGA to resist this appeal because the section applies only to 'rates' and 'assessment' made under Part XV of the LGA. It was clear that s. 157 of the LGA did not concern 'annual value' and 'annual rate'. (paras 30 & 31)

(6) The appellant was entitled to file this appeal against the revised valuation list because s. 2 of the LGA defines 'rateable holding' as 'holding which is subject to the payment of a rate made and levied' under the LGA. In other words, the rates imposed on an owner of a

holding must be lawfully made and levied under the LGA. When the revised valuation list had no effect in law due to non-compliance with s. 137(3) of the LGA, the appellant's land was not 'rateable holding' within the meaning of s. 2 of the LGA. Therefore, the appellant's land was not 'rateable', as understood in s. 142(1)(b) of the LGA and the appellant was entitled to appeal against the revised valuation list to the High Court pursuant to s. 145(1) of the LGA. (para 37)

(7) The appellant submitted that the respondent could not charge any rate regarding the appellant's land because the respondent had not provided any service, facility or amenity to the appellant and/or appellant's land. Reliance was placed on the recommendation in Athi Nahappan's Report. However, The recommendation had not been inserted in the LGA by Parliament. A recommendation and/or finding of a Royal Commission which leads to the introduction of a written law may be referred by the court in the interpretation of the written law only if there is an ambiguity in the meaning of the written law. If the intention of the Legislature is clear from the written law, there is no need to resort to the recommendation and/or finding of the Royal Commission. There was no ambiguity in the construction of ss. 127, 129 and 130 of the LGA. Therefore, there was no necessity for the court to resort to the recommendation in the Athi Nahappan's Report in the interpretation of ss. 127, 129 and 130 of the LGA. (paras 41-44)

(8) The appellant had the legal and evidential burden to persuade the court to allow this appeal because: (i) the appeal concerned the respondent's exercise of a statutory discretion under the LGA regarding the annual value and annual rate applicable to the appellant's land which attracted the application of a rebuttable presumption under s. 114(e) of the EA in the respondent's favour; and (ii) this appeal was lodged by the appellant. The revised valuation list was illegal due to non-compliance with s. 137(3) of the LGA. Consequently, the appellant had discharged the legal and evidential burden to satisfy the court that this appeal should be allowed on this ground alone. In addition to that, there was also no evidence that the respondent had misused the LGA in any manner to perpetrate fraud on the appellant. (paras 47-49)

(9) Since the court allowed the appeal under s. 145(1) of the LGA, in the interest of justice, the court had inherent jurisdiction, inherent power and/or power under O. 92 r. 4 of the Rules of Court 2012 to make a refund order and impose interest at the rate of 5% per annum on the amounts of rates to be refunded by the respondent to the appellant for a period of time. (paras 52 & 53)

Case(s) referred to:

Datuk Bandar Kuala Lumpur v. Bukit Jalil Estates Sdn Bhd & Another Case [1988] 1 CLJ 763; [1988] 1 CLJ (Rep) 25 SC ***(refd)***

Datuk Bandar, Kuala Lumpur v. Hawthornden Rubber Estate Bhd [1988] 1 LNS 152 SC ***(refd)***

Lee Lee Cheng (f) v. Seow Peng Kwang [1960] 1 MLJ 1 ***(refd)***

Majlis Daerah Dungun v. Tenaga Nasional Bhd [2006] 2 CLJ 1078 CA ***(refd)***

Majlis Perbandaran Klang v. Zakiyah Samad [2004] 2 CLJ 429 FC ***(refd)***

Shalimar Malay PLC v. Majlis Daerah Kuala Selangor [2015] 10 CLJ 766 HC ***(refd)***

Syarikat Cahaya Muda Perak (Oil) Sdn Bhd lwn. Majlis Daerah Tapah [2017] 1 LNS 1213 HC ***(refd)***

Legislation referred to:

Civil Law Act 1956, s. 11

Courts of Judicature Act 1964, s. 25(2), Schedule para 1

Evidence Act 1950, ss. 101(1), (2), 102, 114(e), (g)

Local Government Act 1976, ss. 2, 3(a), 13, 127, 129, 130(1), (2)(a), 137(1)(d), (2), (3), 141(1), 142(1)(b), 144(1)(a), (b), (c), (d), (e), (f), (5), 145(1), (5), 146

Rules of Court 2012, O. 42 r. 12, O. 53 r. 1(1), O. 92 r. 4

Specific Relief Act 1950, s. 44(1)

Valuers, Appraisers, Estate Agents and Property Managers Act 1981, ss. 4(2)(a), (b), (c), (d), 16

For the appellant - Anand Raj, Foong Pui Chi & Abhilaash Subramaniam; M/s Shearn Delamore & Co

For the respondent - Anandan P Thatchanamoorthy & Farah Nur Atiqah Bahari; M/s Nazrin Nasir T Anand & Co

Reported by Najib Tamby

JUDGMENT

Wong Kian Kheong J:

Background

[1] The appellant company ("appellant") owns an oil palm plantation at Lots 6 and 7, Ladang Ulu Bernam, Jalan Sungai Panjang, 45300 Sungai Besar, Selangor Darul Ehsan ("appellant's land").

[2] The respondent is a local authority established under the Local Government Act 1976 ("LGA").

[3] The appellant's land is situated within the respondent's "local authority area" as understood in s. 3(a) LGA.

[4] The respondent issued a "notice of revised valuation list" (notis menyemak senarai nilaian) dated 13 June 2014 for the appellant's land ("revised valuation list"). According to the revised valuation list, among others, with effect from 1 July 2014:

(i) the respondent had revised the valuation list for the appellant's land; A

(ii) the "annual value" (nilai tahunan) of the appellant's land is RM168,000; and

(iii) the "annual rate" (kadar tahunan) imposed by the respondent on the appellant's land is 10% of the annual value of RM168,000. B

[5] Pursuant to s. 145(1) LGA, the appellant appealed to the High Court against the annual value and annual rate imposed on the appellant's land by the respondent (appeal (High Court)).

[6] The appeal (High Court) was heard before Mohd Yazid Mustafa J who decided on 7 October 2016 as follows, among others (first order): C

(i) the annual value of the appellant's land was maintained at RM168,000; and

(ii) the annual rate applicable to the appellant's land was 2% of the annual value of RM168,000. D

[7] The "grounds of judgment" by Mohd Yazid Mustafa J however states, among others, that the annual rate which is applicable to the appellant's land is 2.5% of the annual value of RM168,000.

[8] Both the appellant and respondent appealed to the Federal Court against the first order pursuant to s. 145(5) LGA (appeal (Federal Court)). E

[9] After hearing the appeal (Federal Court), the Federal Court ordered this case to be remitted to the High Court (Federal Court's order) to determine the following two questions (two questions):

(i) what is the annual value of the appellant's land? ("first question"); and F

(ii) what is the annual rate applicable to the appellant's land? ("second question").

Issues

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[10] In resolving the two questions, the following issues arise:

(i) regarding the first question:

(a) which part of the definition of "annual value" in s. 2 LGA applies to the appellant's land?; and

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(b) if the first part of the definition of "annual value" in s. 2 LGA (estimated gross annual rent at which the holding might reasonably be expected to let from year to year the landlord paying the expenses of repair, insurance, maintenance or upkeep and all public rates and taxes) applies to the appellant's land: I

A (1) whether the respondent is required under s. 4(2)(b) of the Valuers, Appraisers, Estate Agents and Property Managers Act 1981 ("VAEAPM") to obtain the valuation service of the Director General ("DG") of Valuation and Property Services Department of Malaysia (Jabatan Penilaian dan Perkhidmatan B Harta) ("JPPH") to value the appellant's land. In this regard, should the court exercises its discretion to draw an adverse inference against the respondent under s. 114(g) of the Evidence Act 1950 ("EA") on the ground that the respondent has failed to obtain DG's valuation of the appellant's land?;

C (2) has the respondent complied with the mandatory provision of s. 137(3) LGA which requires the respondent to prepare a new "valuation list" once every five years or within such extended period as the "State Authority" ("SA") may determine?;

D (3) whether the respondent can rely on s. 157 LGA which provides that the "production of the books or records purporting to contain any rate or assessment made under (Part IV LGA) shall, without any other evidence whatever, be *prima facie* proof of the making and validity of the rates or assessment mentioned therein"; and

E (4) whether the appellant is barred by ss. 142(1) and 145(1) LGA from making the appeal (High Court). This question discusses the effect of the Federal Court's judgment in *Majlis Perbandaran Klang v. Zakiyah Samad* [2004] 2 CLJ 429; [2004] 2 MLJ 593 ("*Zakiyah*'s case");

F (ii) in respect of the second question, whether the respondent can charge any rate on the appellant's land when the respondent has not provided any specific service, facility or amenity to the appellant and/or appellant's land. Regarding this issue, can the appellant rely on a recommendation by the Royal Commission of Enquiry on Local Authorities in the G "*Report of the Royal Commission of Enquiry to Investigate into the Workings of Local Authorities in West Malaysia*" ("Athi Nahappan's Report")?;

(iii) has the respondent misused LGA to commit fraud on the appellant?;

(iv) who has the legal and evidential burden to satisfy the court regarding this H appeal?; and

(v) if the first question is resolved in favour of the appellant, whether the court can make a consequential order for the respondent to refund to the appellant the rates which have been paid by the appellant to the respondent with interest.

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Which Part Of Definition Of "Annual Value" In s. 2 LGA Applies To Appellant's Land

[11] Section 2 LGA defines "annual value" as follows:

"annual value" means the estimated gross annual rent at which the holding might reasonably be expected to let from year to year the landlord paying the expenses of repair, insurance, maintenance or upkeep and all public rates and taxes:

Provided that:

(a) in estimating the annual value no account shall be taken of any restrictions or control on rent in so far as it limits the rent which may be required by a landlord or recovered from a tenant of a holding;

(b) in estimating the annual value of any holding in or upon which there is any machinery used for any or all of the following purposes:

(i) the making of any article or part of an article;

(ii) the altering, repairing, ornamenting or finishing of any article;

(iii) the adapting for sale of any article, the enhanced value given to the holding from the presence of such machinery shall not be taken into consideration, and for the purposes of this paragraph "machinery" includes steam engines, boilers or other motive power belonging to such machinery;

(c) *in the case of any land:*

(i) which is partially occupied or partially built upon;

(ii) which is vacant, unoccupied or not built upon;

(iii) with an incomplete building; or

(iv) with a building which has been certified by the local authority to be abandoned or dilapidated or unfit for human habitation, the annual value shall be, in the case of subparagraph (i), either the annual value as hereinbefore defined or ten per centum of the open market value thereof at the absolute discretion of the Valuation Officer, and *in the case of subparagraphs (ii) (iii) and (iv) the annual value shall be ten per centum of the open market value thereof as if, in relation to subparagraphs (iii) and (iv), it were vacant land with no buildings thereon and in all cases the local authority may, with the approval of the State Authority, reduce such percentages to a minimum of five per centum;*

(d) where in respect of any particular holding, in the opinion of the Valuation Officer, there is insufficient evidence to base a valuation of annual value upon, the Valuation Officer may apply such methods of valuation as in his opinion appears appropriate to arrive at the annual value; (emphasis added)

[12] Firstly, the appellant's land falls within the definition of "holding" (any land, with or without buildings thereon, which is held under a separate document of title) in s. 2 LGA.

[13] I accept the contention by the appellant's learned counsel that the appellant's land does not come within the ambit of proviso (c)(ii) to the definition of "annual value" in s. 2 LGA because the appellant's land is not "vacant" or "unoccupied" as oil palm trees are planted on the appellant's land. I refer to the following two judgments in the Supreme Court, both delivered by Wan Hamzah SCJ:

(i) it is decided in *Datuk Bandar Kuala Lumpur v. Bukit Jalil Estates Sdn Bhd & Another Case* [1988] 1 CLJ 763; [1988] 1 CLJ (Rep) 25; [1988] 2 MLJ 179, at pp. 26 and 28 (CLJ); pp. 180 and 182 (MLJ) (*"Bukit Jalil Estates"*), as follows:

> The dispute between the appellant and the respondent arises from the interpretation of certain words contained in the definition of "annual value" in section 2 (LGA).
>
> …
>
> So living on the land is not the only circumstance under which a person may be said to occupy it. A person is said to occupy a piece of land which he cultivates and of which he has the possession and control to the exclusion of others although nobody lives there. This is the true meaning of the word "occupy".
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> …
>
> Since the respondent company has cultivated the lots and used them for rubber tapping with exclusive possession, the lots are fully occupied. None of the lots is unoccupied or partially occupied under provision (c) in the definition of "annual value"; and none of them is vacant because they are planted with rubber trees, and lot 1986 contains buildings on the portion where rubber is not planted.
>
> (emphasis added); and

(ii) *Bukit Jalil Estates* has been followed in *Datuk Bandar, Kuala Lumpur v. Hawthornden Rubber Estate Bhd* [1988] 1 LNS 152; [1988] 2 MLJ 183, at pp. 183-184:

> We heard this appeal together with Civil Appeal No. 365 of 1986 (*Datuk Bandar, Kuala Lumpur v. Bukit Jalil Estates Sdn Bhd* [1988] 2 MLJ 179). The legal issues involved in the two appeals are precisely the same except that in this appeal it is further contended by the respondent company that the appellant was wrong in taking all the lots together and valuing them jointly. In the case of *Datuk Bandar, Kuala Lumpur v. Bukit Jalil Estates Sdn Bhd* [1988] 2 MLJ 179, we

> have stated the correct meaning of the word "occupy", and we have also shown that the words "partially built upon" and "not built upon" in the proviso (c) do not apply to agricultural land. Accordingly, we hold that every one of the lots comprising the Hawthornden Rubber Estate is fully occupied since it is an agricultural land planted with rubber and used by the respondent company for rubber tapping with exclusive possession. As such, it is not a vacant land. Even if all the lots are taken together and considered jointly as an estate, this would not change the position. Still the whole estate is a fully occupied estate and not vacant. Therefore the proviso (c)(i) does not apply, and the rates should be fixed on the basis of the estimated annual rent in accordance with the definition of "annual value". (emphasis added)

[14] It is clear in this case that provisos (a), (b)(i) to (iii), (c)(i), (iii) and (v) to the definition of "annual value" in s. 2 LGA do not apply to the appellant's land. The court cannot also apply proviso (d) to the definition of "annual value" in s. 2 LGA in this case because there is no "opinion" from the respondent's "valuation officer" (defined in s. 2 LGA as a valuation officer appointed by the respondent) that "there is insufficient evidence" to ascertain the "annual value" of the appellant's land.

[15] Premised on the reasons explained in the above paras. 13 and 14, the first part of the definition of "annual value" in s. 2 LGA (estimated gross annual rent at which the holding might reasonably be expected to let from year to year the landlord paying the expenses of repair, insurance, maintenance or upkeep and all public rates and taxes) ("first limb") applies to the appellant's land.

Whether Respondent Should Have Obtained DG's Valuation Of Appellant's Land

[16] The appellant's learned counsel has contended that as the first limb applies to the appellant's land, the respondent has a duty under s. 4(2)(b) VAEAPM to obtain a valuation of the appellant's land by JPPH. According to the appellant's learned counsel, the respondent's failure to obtain from JPPH a valuation of the appellant's land, attracts an adverse inference pursuant to s. 114(g) EA against the respondent.

[17] I reproduce below s. 4(2) VAEAPM:

> *Functions and duties of Director General*
>
> …
>
> *4(2) The Director General shall carry out all or any of the following functions for the Government or for any State Government and may carry out such functions for any local authority, statutory body or body corporate in which the Government or the State Government has an interest and further may carry out such functions for any other person as the Minister may determine:*

A (a) do the valuation of all lands and buildings including furniture, fixtures, trade stocks, plant or machinery and other effects;

(b) *do the valuation of lands and buildings required for* feasibility studies, *court proceedings*, arbitration *or other purposes*;

B (c) act as estate agent including negotiating for sales, purchases, rentals and lettings by agreement, auction or tender; and

(d) do property management, project management and the making or checking of inventories of furniture, fixtures, trade stocks, plant or machinery and other effects. (emphasis added)

C **[18]** I am not able to find any previous Malaysian case which has interpreted s. 4(2) VAEAPM. I am of the view that s. 4(2) VAEAPM has three parts as follows:

(i) DG (interpreted in s. 2 VAEAPM as DG who is appointed under s. 3(1) VAEAPM) has a duty to carry out all the functions specified in s. 4(2)(a) D to (d) VAEAPM ("s. 4(2) functions") for the Federal Government and State Governments ("first part"). The mandatory nature of the first part is clear from Parliament's use of an imperative term "shall" in the first part;

(ii) the second part of s. 4(2) VAEAPM ("second part") confers a discretion E on the DG to carry out s. 4(2) functions for the following three entities:

(a) any local authority;

(b) any statutory body; and

F (c) any body corporate in which the Federal Government or the State Government has an interest (Government Linked Companies ("GLC"));

(iii) according to the third part of s. 4(2) VAEAPM ("third part"), the DG "may" carry out s. 4(2) functions for "any other person" as the G "Minister" (defined in s. 2 VAEAPM as the Finance Minister) may determine. The phrase "any other person" must mean any legal entity other than:

(a) the Federal Government and State Governments (for which the DG is required mandatorily under the first part to carry out s. 4(2) H functions); and

(b) local authorities, statutory bodies and GLC's (for which the DG has a discretion to carry out s. 4(2) functions as provided in the second part); and

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(iv) the use of the mandatory term "shall" in the first part by Parliament and its employment of a discretionary word "may" in the second and third parts, clearly indicates Parliament's intention to distinguish between the mandatory first part on the one hand and the directory second and third parts on the other hand.

[19] Section 4(2) VAEAPM refers to DG and not JPPH (as submitted by the appellant's learned counsel). I am not able to accede to the submission by the appellant's learned counsel that the respondent has a duty under s. 4(2)(b) VAEAPM to obtain DG's ascertainment of the annual value of the appellant's land as understood in the first limb. My reasons are as follows:

(i) the second part is merely directory (please see the above sub-paras. 18(ii) and (iv));

(ii) if I have accepted the above contention by the appellant's learned counsel, this means that DG is required mandatorily to perform all of s. 4(2) functions as requested by any local authority, statutory body and GLC and if DG refuses to do so, the local authority, statutory body and GLC may apply to court for an order of *mandamus* under s 44(1) of the Specific Relief Act 1950 to compel DG to carry out all of s. 4(2) functions for the local authority, statutory body and GLC; and

(iii) s. 13 LGA provides as follows:

> **Local authorities to be corporations**
>
> 13 **Every local authority shall be a body corporate** and shall have perpetual succession and a common seal, which may be altered from time to time, and may sue and be sued, acquire, hold and sell property **and generally do and perform such acts and things as bodies corporate may by law do and perform.** (emphasis added)

By virtue of s. 13 LGA, the respondent shall be a body corporate and has the power to "generally do and perform such acts and things as bodies corporate may by law do and perform". As such, the respondent has a discretionary power under s. 13 LGA to appoint a "registered valuer" (a valuer registered with the Board of Valuers, Appraisers, Estate Agents and Property Managers as required by s. 16 VAEAPM) (private valuer) to ascertain the "annual value" of any "holding" within the meaning of the first limb. If I have acceded to the above submission by the appellant's learned counsel, this is contrary to s. 13 LGA and fetters unlawfully the respondent's discretionary power to appoint a private valuer to obtain the annual value of a holding as understood in the first limb.

[20] I should clarify that my construction of s. 4(2) VAEAPM in the above sub-paras. 18(ii) and (iv) does not prevent any local authority (including the respondent), statutory body and GLC from applying for DG's service to ascertain the annual value of any holding within the meaning of the first limb. Needless to say, it is entirely up to DG to accept such a request by a local authority, statutory body and GLC.

[21] As the respondent is not bound by s. 4(2)(b) VAEAPM to obtain DG's valuation of the annual value of the appellant's land as understood in the first limb, this court cannot invoke any adverse inference under s. 114(g) EA against the respondent for not obtaining such a valuation of the appellant's land by DG.

Had Respondent Failed To Comply With Mandatory s. 137(3) LGA?

[22] Sections 137, 141 and 144 LGA provide as follows:

Preparation of Valuation List

137(1) The local authority shall cause a Valuation List of all holding not exempted from the payment of rates to be prepared containing:

(a) the name of the street or locality in which such holding is situated;

(b) the designation of the holding either by name or number sufficient to identify it;

(c) the names of the owner and occupier, if known;

(d) *the annual value* or improved value *of the holding.*

(2) *The Valuation List together with the amendments made under section 144 shall remain in force until it is superseded by a new Valuation List.*

(3) *A new Valuation List which shall contain the same particulars as in subsection (1) shall be prepared and completed once every five years or within such extended period as the State Authority may determine.*

Notice of new Valuation List to be published

141(1) Where any Valuation List has been prepared or adopted under the provisions of section 137 the local authority shall give notice of the same and of the place where the Valuation List or a copy thereof may be inspected in the Gazette and by way of advertisement in two local newspapers at least one of which is in the national language.

(2) Any person claiming to be either the owner or occupier of a holding included in the Valuation List or the agent of any such person may inspect the Valuation List and make extracts therefrom without charge.

(3) The local authority shall give notice in the same manner of a day not being less than forty-two days from the date of notification in the *Gazette* when the local authority will proceed to revise the Valuation List and in all cases in which any holding is for the first time valued or the valuation thereon has increased the local authority shall also give notice to the owner or occupier thereof.

Amendments to Valuation List

144(1) *Where by reason of:*

(a) *a mistake, oversight or fraud the name of any person or the particulars of any rateable holding which ought to have been inserted in or omitted from the Valuation List, has been omitted from or inserted in the Valuation List, as the case may be, or any rateable holding has been insufficiently or excessively valued or for any other reason whatsoever any rateable holding has not been included in the Valuation List;*

(b) *any building erected, modified, altered, demolished or rebuilt, or other improvements made upon a rateable holding the value thereof has been increased;*

(c) *any building or part of a building being demolished or any other works being carried out on the rateable holding the value thereof has been decreased;*

(d) *any rateable holding which has been included in a joint valuation and which in the opinion of the Valuation Officer ought to have been valued separately or otherwise;*

(e) *the issue of any new titles in respect of any holdings;*

(f) *any change to the rateable holding effected by any law relating to planning as a result of which the value of the holding has been increased or decreased,*

the Valuation Officer may at any time amend the Valuation List accordingly and rates shall be payable in respect of the holding in question in accordance with the Valuation List so amended.

(2) Notice shall be given to all persons interested in the amendment of a time, not less than thirty days from the date of service of such notice, at which the amendment is to be made.

(3) Any person aggrieved by the amendment of the Valuation List on any of the grounds specified in section 142 may make objection in writing to the local authority not less than ten days before the time fixed in the notice and shall be allowed an opportunity of being heard in person or by an authorised agent.

(4) Any amendment made under this section may, at the discretion of the local authority, have regard to the level of annual values or improved value prevailing as at or about the time the current Valuation List was prepared.

A (5) *Any amendment made in the Valuation List in accordance with this section shall be confirmed by the local authority.*

(6) Where on account of any amendment in the Valuation List the rate payable in respect of any holding is enhanced, reduced or extinguished, the new rate shall be payable, or the rate shall cease to be payable, from the commencement of the next half year or such earlier date as the local B authority may determine. (emphasis added)

[23] I construe s. 137 LGA as follows:

(i) a local authority has a mandatory duty pursuant to s. 137(1) LGA to prepare a "valuation list" of all holdings which are not exempted from C payment of rates. Section 2 LGA defines a "valuation list" as a valuation list prepared under LGA. The local authority's mandatory duty under s. 137(1) LGA is clear from the Legislature's use of an imperative term "shall" in that provision;

D (ii) according to s. 137(1)(d) LGA, a valuation list shall contain, among others, the "annual value" of the holding;

(iii) a valuation list may be amended by a local authority's valuation officer in the circumstances specified in s. 144(1)(a) to (f) LGA ("amendment (valuation list)"). Section 144(5) LGA requires the amendment E (valuation list) to be confirmed by the local authority;

(iv) by virtue of s. 137(2) LGA, a valuation list together with the amendment (valuation list) "shall remain in force until it is superseded by a new valuation list". The "valuation list" stated in s. 137(2) LGA must refer to the "valuation list" which:

F (a) is first prepared in accordance with s. 137(1) LGA; and

(b) a new valuation list which complies with s. 137(3) LGA (please see sub-para. (v) below);

(v) s. 137(3) LGA imposes a mandatory requirement for a local authority G to prepare and complete a new valuation list:

(a) once every five years; or

(b) within such extended period as SA (defined in s. 2 LGA) may determine.

H The use of an imperative term "shall" in s. 137(3) LGA clearly evinces Parliament's intention for this provision to have mandatory effect. The mandatory effect of s. 137 LGA (including its sub-s. (3)), is fortified by s. 141(1) LGA – the local authority can only proceed to give notice of the new valuation list after the new valuation list has been prepared and

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completed in compliance with s. 137 LGA. In support of the mandatory effect of s. 137(3) LGA, I cite the following judgment by Che Mohd Ruzima Ghazali J in the High Court in *Syarikat Cahaya Muda Perak (Oil) Sdn Bhd lwn. Majlis Daerah Tapah* [2017] 1 LNS 1213, at paras. [21]-[23], [25], [27] and [28] (*"Syarikat Cahaya Muda Perak"*):

> [21] *Berdasarkan skim yang diperuntukkan di bawa Akta 171, PBT dikehendaki menyedia dan menyiapkan satu Senarai Nilaian baru sekali setiap lima tahun. Itu adalah tugas hakiki PBT di bawah undang-undang. Penggunaan perkataan 'hendaklah' sebelum perkataan-perkataan 'disediakan dan disiapkan sekali tiap-tiap lima tahun atau dalam tempoh yang dilanjutkan sebagaimana ditentukan oleh Pihak Berkuasa Negeri' di bawah subseksyen 137(3) Akta 171 tidak boleh dipandang ringan. Begitu juga dengan penetapan suatu tempoh tertentu oleh undang-undang, sudah tentulah ianya mempunyai maksudnya yang tersendiri. …*
>
> [22] *Jika diteliti peruntukan s. 137 Akta 171, Senarai Nilaian yang disediakan di subseksyen 137(1) bersama pindaan di bawah s. 144 hendaklah berkuat kuasa sehingga ianya digantikan dengan satu Senarai Nilaian baru seperti mana diperuntukkan di bawah subseksyen 137(2). Disusuli pula selepas itu dengan kehendak kepada penyediaan Senarai Nilaian baru bagi tempoh lima tahun sekali di bawah subseksyen 137(3). Persoalannya, kenapakah penggubal undang-undang mewajibkan penyediaan Senarai Nilaian baru di dalam suatu tempoh yang telah ditetapkan tersebut?*
>
> [23] *Bagi menjawab soalan tersebut, keperluan untuk diadakan Senarai Nilaian baru perlu dilihat. Secara semula jadinya, setelah satu Senarai Nilaian disiapkan di bawah s. 137 dan mula berkuat kuasa, sudah tentulah akan berlaku perubahan fizikal kepada kawasan pentadbiran mana-mana PBT selepas itu. Pembangunan baru perumahan atau bangunan komersial oleh orang persendirian atau pemaju yang mewujudkan pegangan baru sudah pastilah akan berlaku. Begitu juga jika ada keputusan peluasan kawasan pentadbiran PBT oleh PBN. Sudah tentulah akan melibatkan banyak pegangan baru yang perlu diberikan perkhidmatan oleh PBT. Penambahan pegangan baru inilah yang memerlukan PBT menyediakan satu Senarai Nilaian baru. Sehubungan dengan itu, tempoh lima tahun yang ditetapkan sangatlah relevan bagi mengambil kira perubahan yang berlaku di samping dapat memberikan masa yang secukupnya kepada PBT untuk menyediakan satu Senarai Nilaian baru.*
>
> …
>
> [25] *Berhubung dengan Senarai Nilaian, defendan sendiri mengakui bahawa Senarai Nilaian yang digunakan di dalam kawasan pentadbirannya telah disiapkan sejak tahun 1988 lagi. Tidak ada sebarang Senarai Nilaian baru yang disediakan selepas itu. Tempoh lima tahun untuk defendan menyediakan satu Senarai Nilaian baru seperti yang*

A *diperuntukkan undang-undang tidak dipatuhi defendan. Peruntukan 'atau dalam tempoh yang dilanjutkan sebagaimana ditentukan oleh Pihak Berkuasa Negeri' di bawah subseksyen 137(3) Akta 171 tidak boleh digunakan sebagai satu cara bagi mengelak penyediaan satu Senarai Nilaian baru oleh PBT. Peruntukan tersebut hanya merujuk kepada perlanjutan tempoh oleh PBN bagi defendan menyediakan satu Senarai*
B *Nilaian baru sahaja dan bukannya boleh digunakan untuk melanjutkan tempoh kuat kuasa Senarai Nilaian sedia ada. Alasan ketiadaan kelulusan atau arahan dari PBN untuk defendan menyediakan satu Senarai Nilaian baru seperti mana yang dihujahkan peguam defendan, bukanlah satu alasan kukuh yang boleh mengecualikan defendan dari melaksanakan*
C *tanggung jawab menyediakan satu Senarai Nilaian baru di bawah undang-undang.*

…

[27] *Berdasarkan analisis dan dapatan ke atas peruntukan undang-undang tersebut, adalah didapati bahawa penetapan kadar bagi sesuatu*
D *pegangan baru kendaklah dilakukan dengan mematuhi kehendak s. 137, 141 dan 142 Akta 171. Tindakan defendan mengeluarkan Notis Meminda tersebut di bawah s. 144 Akta 171 bagi tujuan memasukan hartanah plaintif, iaitu satu pegangan baru ke dalam Senarai Nilaian sedia ada bagi penentuan kadar adalah berlawanan dengan undang-undang. Kesannya, pengenaan kadar ke atas hartanah plaintif yang dibuat melalui*
E *penyerahan Notis Meminda tersebut adalah tidak sah. Defendan seharusnya menyediakan satu Senarai Nilaian baru bagi memasukkan hartanah plaintif di dalam senarai pegangan yang hendak dikenakan cukai taksiran.*

[28] *Perintah diberikan kepada plaintif seperti mana berikut:*

F i. *Perintah deklarasi bahawa Notis Meminda tersebut bertarikh 25.11.2015 adalah batal dan tidak sah;*

ii. *wang yang dibayar plaintif sebagai cukai taksiran sebanyak RM269,965.80 kepada defendan dikembalikan; …*

(emphasis added)

G The above High Court's decision in *Syarikat Cahaya Muda Perak* has been affirmed by the Federal Court. However, there is no written judgment by the Federal Court in *Syarikat Cahaya Muda Perak*; and

(vi) a valuation list which is not prepared by a local authority in accordance
H with the mandatory provision of s. 137(3) LGA is void ("unlawful valuation list") – please see *Syarikat Cahaya Muda Perak*. In such a case:

(a) the owner of a holding who has paid rates to a local authority based on an unlawful valuation list, is entitled to a refund of the rates from the local authority – *Syarikat Cahaya Muda Perak*;

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(b) in view of the unlawful valuation list, the local authority is duty-bound to prepare and complete a new valuation list which complies with s. 137(3) LGA; and

(c) once a new valuation list has been prepared and completed in accordance with s. 137(3) LGA, the local authority may then require the owner of a holding to pay rates to the local authority based on the annual value of the holding as stated in the new valuation list. In this regard, a local authority cannot be estopped by the unlawful valuation list from claiming for rates in respect of the period of time covered by the unlawful valuation list. This is because a local authority is duty-bound under LGA, in particular s. 146 LGA, to collect rates from owners of holdings. I reproduce below s. 146 LGA:

> Rates to be first charge.
>
> 146 *All rates shall be paid by the persons who are the owners of the holdings for the time being, and until so paid shall, subject to the provisions of the National Land Code, be a first charge on the holdings in respect of which they are assessed, and if not paid within the prescribed time, shall be recoverable in the manner hereinafter prescribed.*
>
> (emphasis added).

In the Court of Appeal case of *Majlis Daerah Dungun v. Tenaga Nasional Bhd* [2006] 2 CLJ 1078 ("*TNB*'s case"), at paras. [31], [42] and [46], Mohd Ghazali Yusoff JCA (as he then was), decided as follows:

> [31] *I am of the view that the doctrine of estoppel cannot apply to the facts of the case before him. The rates imposed by the appellant vide the said notice has become due and payable as from 1 July 1991 under [LGA] and to admit estoppel against the appellant, it being a public authority, would have the effect of nullifying the provisions of [LGA]. To admit estoppel against a public authority, the court must first of all determine the nature of the obligation imposed by the Act on the public authority and then consider whether the admission of an estoppel under the circumstances of the case would nullify the statutory provisions.*
>
> …
>
> [42] … Thus, on the facts, the respondent did not lodge any written objection with the appellant against the said notice, did not pay the annual rate imposed but chose to make annual "interim payments", on its own volition and estimation at that, which fell far below the annual rate

> imposed by the appellant and upon being sued for the unpaid balance of the annual rates now raise a defence of estoppel against the appellant and counterclaim, inter alia, for a declaration that the said notice is *ultra vires* [LGA]. *I cannot see how under such circumstances an estoppel can be raised against the appellant, it being a public authority and a body which is authorised under [LGA] to impose and collect rates for purposes under [LGA].*
>
> …
>
> [46] … *To admit estoppel under such circumstances would have the effect of nullifying the statutory provisions of [LGA]. Further, the evidence showed that although prolonged negotiations did take place between the parties for a substantial period of time, the negotiations did not result in a written agreement duly executed by the parties. Be that as it may, it must be remembered that an estoppel is only a rule of evidence and could not avail to release the respondent from an obligation to obey [LGA] nor could it enable the respondent to escape from statutory obligation to pay the rate imposed by the appellant.* …
>
> (emphasis added)

Based on *TNB*'s case, local authorities cannot be estopped from performing their statutory duties to collect rates by virtue of LGA.

[24] I accept the submission by the appellant's learned counsel the revised valuation list has not complied with the mandatory requirement of s. 137(3) LGA. This is because the respondent has not prepared any new valuation list every five years or within an extended period of time as determined by SA.

[25] The circumstances specified in s. 144(1)(a) to (f) LGA do not apply to the revised valuation list. Furthermore, the revised valuation list was not prepared by the respondent's valuation officer under s. 144(1) LGA and confirmed by the respondent pursuant to s. 144(5) LGA. As such, the respondent cannot rely on s. 144(1)(a) to (f) LGA to justify any amendment in the form of the revised valuation list.

[26] The respondent's learned counsel has relied on s. 137(2) LGA to contend that the revised valuation list "shall remain in force until it is superseded by a new valuation list". As explained in the above sub-para. 23(iv), the "valuation list" envisaged by s. 137(2) LGA is the "original" valuation list prepared in accordance with s. 137(1) LGA and a new valuation list which complies with s. 137(3) LGA. As the revised valuation list is neither an "original" valuation list (prepared pursuant to s. 137(1) LGA) nor a new valuation list (which complies with s. 137(3) LGA), the respondent cannot therefore rely on s. 137(2) LGA in this appeal.

[27] In view of the reasons explained in the above paras. 24 to 26, I am constrained to decide that the revised valuation list is void for non-compliance with the mandatory requirement of s. 137(3) LGA. If I have decided otherwise, this will give a *carte blanche* all local authorities to defy s. 137(3) LGA and not prepare new valuation lists once every five years. Such an outcome is not only contrary to good governance of local authorities but also ignores any development of the local authority area in a span of five years (which may justify an increase in the annual values and annual rates of holdings in the local authority area).

[28] Despite the illegality of the revised valuation list in this case, the respondent is not estopped from issuing a new valuation list in accordance with s. 137(3) LGA – please see the above sub-para. 23(vi)(c). In preparing a new valuation list, the local authority has a discretion to appoint a private valuer (as explained in the above sub-para. 19(iii)) or request the assistance of the DG (please refer to the above para. 20).

Can Respondent Rely On s. 157 LGA?

[29] Section 157 LGA states as follows:

> *Evidence of rates*
>
> 157 *The production of the books or records purporting to contain any rate or assessment made under this Part shall, without any other evidence whatever, be prima facie proof of the making and validity of the rates or assessment mentioned therein.* (emphasis added)

[30] The respondent's learned counsel has relied on s. 157 LGA and documents adduced by the respondent to support the annual value of RM168,000 for the appellant's land.

[31] This is a case of first impression regarding the effect of s. 157 LGA. I am of the view that the respondent cannot rely on s. 157 LGA to resist this appeal. This is because s. 157 LGA applies only to "rates" and "assessment" made under Part XV of LGA (Rating and Valuation). It is clear that s. 157 LGA does not concern "annual value" and "annual rate". In *Lee Lee Cheng (f) v. Seow Peng Kwang* [1960] 1 MLJ 1, at p. 3, Thomson CJ (as he then was) held in the Federation of Malaya's Court of Appeal that when different words are used by the Legislature in a statute, those different words are intended by the Legislature to refer to different matters.

A **Is Appellant Barred By ss. 142(1) And 145(1) LGA From Appealing Against Revised Valuation List?**

[32] The respondent's learned counsel has relied on *Zakiyah*'s case in advancing the argument that the appellant is barred by ss. 142(1) and 145(1) LGA from making this appeal.

B

[33] Sections 142 and 145 LGA provide as follows:

Objections

142(1) **Any person aggrieved on any of the following grounds:**

C (a) that any holding for which he is rateable is valued beyond its rateable value;

(b) **that any holding valued is not rateable;**

(c) that any person who, or any holding which, ought to be included in the Valuation List is omitted therefrom;

D (d) that any holding is valued below its rateable value; or

(e) that any holding or holdings which have been jointly or separately valued ought to be valued otherwise,

may make objection in writing to the local authority at any time not less
E **than fourteen days before the time fixed for the revision of the Valuation List.**

(2) All objections shall be enquired into and the persons making them shall at such enquiry be allowed an opportunity of being heard either in person or by an authorised agent.

F **Appeals**

145(1) Any person who having made an objection in the manner prescribed by section 142 or 144 is dissatisfied with the decision of the local authority thereon may appeal to the High Court by way of originating motion:

G Provided that with the filing of the originating motion there shall be paid into the local authority the amount of the rate appealed against.

(2) The originating motion shall be filed by the person dissatisfied with the decision of the local authority within fourteen days of the receipt thereof.

H (3) The local authority shall be the respondent in any appeal under this section.

(4) Every such appeal shall be heard before the High Court whose decision on questions of fact shall be final and conclusive.

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(5) From the decision of the High Court either party may appeal on questions of law to the Federal Court whose decision shall be final and conclusive.

(6) In any appeal under subsection (5), the provision of any written law for the time being in force relating to appeals in civil matters from the High Court in its appellate jurisdiction to the Federal Court shall apply.

(emphasis added)

[34] In *Zakiyah*'s case, at paras. [1], [2] and [13] (MLJ), Abdul Malek Ahmad FCJ (as he then was) delivered the following judgment of the Federal Court:

[1] *The respondent is the owner of unit B-7-25, 7th Floor, Flat Cempaka, Persiaran Bukit Raja, Bandar Baru Klang. She received her notice of assessment dated 1 December 2000 from the appellant which stated that the annual value of the holding is RM2,400, that the rate of assessment is 9% and that the assessment is RM216 pa.*

[2] *Being dissatisfied with the notice of assessment, the owners of Rumah Pangsa Cempaka and Mawar through their association, Persatuan Penduduk Rumah Pangsa Cempaka and Mawar filed an objection against the rate of assessment of 9% pursuant to s 142 [LGA].*

…

[13] … *Having considered the arguments, we were inclined to agree with the learned counsel for the appellant that the rate of assessment is not appealable under s 145 [LGA], which covers appeals by persons aggrieved by the decision of the local authority as regards their objections under ss 142 or 144 [LGA], as no objection could be made against the rate of assessment under s 142(1) [LGA] in the first place.*

(emphasis added)

[35] Firstly, *Zakiyah*'s case merely concerns an appeal to the High Court by an owner of a holding against the annual rate imposed by the local authority on the holding. The Federal Court has decided in *Zakiyah*'s case that an appeal by an owner of a holding against the annual rate imposed by a local authority is not competent under ss. 142(1) and 145(1) LGA.

[36] This case is clearly distinguishable from *Zakiyah*'s case because the revised valuation list relied on by the respondent to impose the annual value and annual rate on the appellant's land is void for non-compliance with the mandatory s. 137(3) LGA (please see the above paras. 24 to 27).

[37] I am of the view that the appellant is entitled to file this appeal against the revised valuation list because s. 2 LGA defines "rateable holding" as "a holding which is subject to the payment of a rate made and levied" under LGA. In other words, the rates imposed on an owner of a holding must be lawfully made and levied under LGA. When the revised valuation list has

no effect in law due to non-compliance with s. 137(3) LGA (for reasons expressed in the above paras. 24 to 27), the appellant's land is not a "rateable holding" within the meaning of s. 2 LGA. Hence, the appellant's land is not "rateable" as understood in s. 142(1)(b) LGA and the appellant is entitled to appeal against the revised valuation list to the High Court pursuant to s. 145(1) LGA.

[38] There is another reason why I cannot accept the respondent's above submission that the appellant is not entitled to file this appeal. If I have accepted the respondent's above contention, such a decision will render nugatory the Federal Court's order. It is to be emphasised that the Federal Court's order is an order of our apex court.

[39] Before I discuss the second question, I need to highlight that there is no application for a judicial review of a local authority's decision in *Zakiyah*'s case. I opine that where an owner of a holding is not satisfied with a local authority's decision under LGA and such a decision does not fall within s. 142(1)(a) to (e) read with s. 145(1) LGA (the local authority's decision is therefore not appealable to the High Court), the owner of the holding may apply to court for a judicial review of the local authority's decision pursuant to s. 25(2), para. 1 of the Schedule (para. 1) to the Courts of Judicature Act 1964 ("CJA") and O. 53 r. 1(1) of the Rules of Court 2012 ("RC"). I reproduce below s. 25(2) CJA, para. 1 and O. 53 r. 1(1) RC:

> CJA
>
> s 25 **Powers of the High Court**
>
> …
>
> (2) **Without prejudice to the generality of subsection (1) the High Court shall have the additional powers set out in the Schedule:**
>
> **Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the same.**
>
> Paragraph 1 **Prerogative writs**
>
> **Power to issue to any** person or **authority directions, orders or writs,** including writs of the nature of *habeas corpus*, ***mandamus*, prohibition,** ***quo warranto*** **and** ***certiorari*****, or any others, for the enforcement of the rights conferred by Part II of the Constitution, or any of them, or for any purpose.**
>
> Order 53 RC Application for judicial review
>
> Application for judicial review r. 1(1) This Order shall govern all applications seeking the relief specified in [Paragraph 1] and for the purposes therein specified. (emphasis added)

Answer To First Question

[40] In view of the unlawful valuation list (please refer to the above paras. 24 to 27), the annual value of the appellant's land is zero.

Whether Respondent Can Charge Rates For Appellant's Land

[41] The appellant has submitted that the respondent cannot charge any rate regarding the appellant's land because the respondent has not provided any service, facility or amenity to the appellant and/or appellant's land. Reliance has been placed by the appellant on the following recommendation in Athi Nahappan's Report ("Recommendation (Athi Nahappan's Report)"):

> …
>
> **every house-holder in a local authority should be required to pay a nominal contribution of not less than $1 per annum *in lieu* of rates if no service is provided by the local authority.** (emphasis added).

[42] Firstly, I am of the view that the recommendation (Athi Nahappan's Report) has not been inserted in LGA by Parliament. In fact, the appellant's learned counsel has not identified any provision in LGA which has incorporated the recommendation (Athi Nahappan's Report), either expressly or by necessary implication. Accordingly, the recommendation (Athi Nahappan's Report) in itself has no legal force.

[43] A recommendation and/or finding of a Royal Commission which leads to the introduction of a written law, may be referred by the court in the interpretation of the written law only if there is an ambiguity in the meaning of the written law. If the intention of the Legislature is clear from the written law (by way of a literal and/or purposive interpretation of the written law), there is no need to resort to the recommendation and/or finding of the Royal Commission.

[44] I am unable to accept the appellant's contention that the respondent cannot charge any rate regarding the appellant's land merely because the respondent has not provided any specific service, facility or amenity to the appellant and/or appellant's land. This decision is premised on the following reasons:

(i) there is no provision in LGA, either expressly or by necessary implication, which provides that a local authority can only impose rates on a particular owner of a holding if the local authority has provided a specific service, facility or amenity to the owner and/or holding. On the contrary, the local authority has a discretionary power under ss. 127, 129 and 130 LGA to impose rates and the exercise of such a discretion is not dependent on the provision of any specific service, facility or amenity to a particular holding and/or certain owner of a holding. Sections 127, 129 and 130 LGA provide as follows:

Power to impose rates

127 The local authority may, with the approval of the State Authority, from time to time as is deemed necessary, impose either separately or as a consolidated rate, the annual rate or rates within a local authority area for the purposes of this Act or for other purposes which it is the duty of the local authority to perform under any other written law.

Division of area and holding for rating purposes.

129 For the purposes of this Part, the local authority may divide its area into two or more parts and may in respect of such separate part or parts impose such rate or rates as may be considered just and proper and the local authority may further impose within such part or parts a differential rating in accordance with the actual usage of the holding or part thereof.

Limitation of assessment rate

130(1) *Any rate or rates imposed under this Part may be assessed upon the annual value of holdings* or upon the improved value of holdings as the State Authority may determine.

(2) *If any rate or rates are assessed upon the annual value of holdings such rate or rates shall not exceed*:

(a) *thirty five per centum of the annual value in the case of the rates imposed under section 127*;

…

(c) five per centum of the annual value in the case of the rates imposed under section 132.

(3) If any rate or rates are assessed upon the improved value of holdings such rate or rates shall not exceed:

(a) five per centum of the improved value in the case of rates imposed under section 127;

…

(c) one per centum of the improved value in the case of rates imposed under section 132.

(emphasis added)

(ii) there is no ambiguity in the construction of ss. 127, 129 and 130 LGA. Hence, there is no necessity for the court to resort to the recommendation (Athi Nahappan's Report) in the interpretation of ss. 127, 129 and 130 LGA;

(iii) the Court of Appeal has decided as follows in *TNB*'s case, at paras. [32], [33] and [46]:

[32] *... Section 130 [LGA] provides the local authority may assess any rate or rates upon the annual value of holdings or upon the improved value of holdings as the State Authority may determine*.

[33] *Thus, pursuant to the provisions of [LGA], the local authority's duty is to impose the annual rate or rates within its local authority area for the purposes of [LGA] and the duty of an owner of a holding within the local authority area is to pay for the assessment at the rate determined by the local authority.*

…

[46] … *The respondent's liability as a ratepayer is not a private debt but a public obligation. The appellant has to perform the duties and exercise the powers specified in [LGA]. As a local authority, it would require revenue to perform its duties. Section 63 [LGA] provides it shall have the general control and care of all places within the local authority area which have been or shall be at any time set apart and vested in the appellant for the use of the public or to which the public shall at any time have or have acquired a common right. It may erect and maintain in any open public place buildings for public purposes. Section 72 [LGA] provides certain powers to a local authority in relation to sanitation, the erection and managing of markets, lodging houses, stalls, public lavatories and abattoirs. It has also the power to safeguard and promote the public health, for example, to take all necessary and reasonably practical measures for preventing the occurrence of any infectious, communicable or preventable diseases. To carry out its duties the appellant requires revenue. Section 39 [LGA] states that the revenue of a local authority shall consist of all taxes, rates, rents, licenses, fees, dues and other sums of charges payable to the local authority by virtue of the provisions of [LGA] or any other written law. Thus, one of the principal source of revenue for the appellant, like any other local authority, is rates.*

(emphasis added)

TNB's case has been followed by Azimah Omar JC (as she then was) in the High Court case of *Shalimar Malay PLC v. Majlis Daerah Kuala Selangor* [2015] 10 CLJ 766, at para. [77]. It is further decided in *Shalimar Malay PLC* (*supra*), at paras. [67] and [78]-[80], as follows:

[67] *Now, it is the contention of the appellant that direct services from the respondent is a condition precedent or a requisite to be fulfilled before the respondent may have the rights to impose rates. It must be noted here that the appellant's contention is not supported by any direct authority be it any statutory provision or decided precedents.*

...

(a) *Paying Rates Is A Statutory Duty*

[78] *From the passage of the Court of Appeal's dicta above [TNB's case], in reference to the general control and care of the local authority of its jurisdiction under s. 63, the powers of the local authority under s. 72 and the fact that the source of revenue for the local authority to perform its power*

is stated under s. 39, the court is of the considered view that the obligation to pay rates to enable the local authority to perform its powers for the public's benefit at large (and not any private benefit) is a statutory obligation. This is coherent with the power of the local authority under s. 127 [LGA] to impose rates "as is deemed necessary".

[79] *It is this court's judgment that when the appellant's properties are within the jurisdiction of the powers of the respondent, and to enable the respondent to perform its powers to render services to the public at large, the appellant is statutorily obligated to pay the rates as imposed by the respondent notwithstanding any contention on a supposed direct service to be rendered to the appellant.*

(b) *The Respondent As The Local Authority Is Not Obligated To Render Direct Services To The Appellant Especially Not Within The Properties Of The Appellant*

[80] *It is sufficiently compelling from the dicta above that "the respondent's liability as a ratepayer is not a private debt but a public obligation" to infer that there is no duty owed by the respondent in the present case to render services directly and personally to the appellant in its properties. The power of the local authority is to be exercised for the benefit of the public at large and not specific to the benefit of any private interest and/or interests. And indeed, the respondent does provide various services throughout the areas surrounding the appellant's properties, particularly the waste/rubbish disposal services and the public bus stops within the district of Kuala Selangor. …* (emphasis added)

It is clear from *TNB*'s case and *Shalimar Malay PLC* that:

(a) local authorities have a statutory duty under LGA to collect rates from owners of holdings; and

(b) owners of holdings have a statutory duty under LGA to pay rates to the local authorities – irrespective of whether local authorities have provided a specific service, facility or amenity to a particular holding and/or certain owner of holding; and

(iv) if I have accepted the above submission by the appellant, this will create the following absurdity – every time a local authority imposes rates on an owner of a holding, the owner can "insist" the local authority to "prove" that a particular service, facility or amenity has been rendered by the local authority to the owner and/or holding in question.

Second Question

[45] I have resolved the first question in the appellant's favour (please see the above para 40). In the event that the Federal Court reverses my decision on the first question, I will now proceed to answer the second question.

[46] Assuming the revised valuation list is valid and the annual value of the appellant's land is RM168,000, I accept the submission by the respondent's learned counsel that the annual rate for the appellant's land is 2.5%. This decision is premised on the following evidence and reasons:

(i) the respondent had presented a paper to Selangor's Economic Action Council (Majlis Tindakan Ekonomi Selangor), exh. "MN5" in an affidavit affirmed by En Mohd Nabil bin Mohd Sulaiman on 17 March 2015 (court encl. no. 14) ("respondent's paper"). In the respondent's paper, the respondent had applied for SA's approval to increase the rates for the respondent's local authority area with effect from 1 January 2006;

(ii) the SA had approved the respondent's paper;

(iii) according to the respondent's paper, the annual rate for the appellant's land in Zone A, for the category of "agriculture/squatters" (pertanian/setinggan) is 2.5%;

(iv) the appellant has not adduced any evidence from a private valuer to show that the annual rate of 2.5% for the appellant's land is manifestly excessive;

(v) the appellant has failed to prove that:

(a) the respondent's exercise of its discretionary power under ss. 127, 129, 130(1) and (2)(a) LGA (in fixing 2.5% as the annual rate for the appellant's land) is based on an irrelevant consideration; and

(b) the respondent has failed to take into account a relevant factor in the exercise of its discretionary power to decide 2.5% as the annual rate for the appellant's land; and

(vi) there is a rebuttable presumption under s. 114(e) EA that the respondent has exercised lawfully its discretion (pursuant to ss. 39, 127, 129, 130(1) and (2)(a) LGA) to fix 2.5% as the annual rate for the appellant's land. Section 114(e) EA states as follows:

> *Court may presume existence of certain fact*
>
> *114. The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.*
>
> *ILLUSTRATIONS*
>
> …
>
> (e) that judicial and *official acts have been regularly performed;*
>
> (emphasis added)

By virtue of s. 114(e) EA, the appellant (not the respondent) has the legal onus to satisfy this court on a balance of probabilities that the respondent's "official" act in fixing 2.5% as the annual rate for the appellant's land, has not been "regularly performed". I have no hesitation to decide that the appellant has failed to discharge this burden to satisfy me that the respondent has not exercised lawfully its discretion (pursuant to ss. 127, 129, 130(1) and (2)(a) LGA) to fix 2.5% as the annual rate for the appellant's land.

Has Respondent Misused LGA As An Engine Of Fraud Against Appellant?

[47] The appellant's learned counsel has advanced a submission to the effect that the respondent has abused LGA as an instrument to commit fraud on the appellant. I have perused all the affidavits filed by the appellant and respondent in this case. There is no evidence that the respondent has misused LGA in any manner to perpetrate fraud on the appellant.

Who Has Legal And Evidential Burden To Succeed In This Appeal?

[48] According to the appellant's learned counsel, the respondent has the legal and evidential burden under ss. 101(1), (2) and 102 EA to satisfy the court on why this appeal should not be allowed. I have a contrary view. The appellant has the legal and evidential burden to persuade the court to allow this appeal because:

(i) this appeal concerns the respondent's exercise of a statutory discretion under LGA regarding the annual value and annual rate applicable to the appellant's land which attracts the application of a rebuttable presumption under s. 114(e) EA in the respondent's favour – please see the above sub-para. 46(vi); and

(ii) this appeal is lodged by the appellant.

[49] As explained in the above paras. 24 to 27, the revised valuation list is illegal due to non-compliance with s. 137(3) LGA. Consequently, the appellant has discharged the legal and evidential burden to satisfy the court that this appeal should be allowed on this ground alone.

Consequential Order

[50] The last issue is whether this court can make a consequential order for the respondent to refund to the appellant the rates which have been paid by the appellant to the respondent ("refund order") with interest.

[51] Order 92 r. 4 RC provides as follows:

> **Inherent powers of the Court**
>
> **O. 92 r. 4 For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice** or to prevent an abuse of the process of the Court. (emphasis added)

[52] I am of the view that since the court has allowed this appeal under s. 145(1) LGA, in the interest of justice, the court has inherent jurisdiction, inherent power and/or power under O. 92 r. 4 RC to make a refund order. A refund order was made by the High Court in *Syarikat Cahaya Muda Perak* and the refund order had been subsequently affirmed by the Federal Court.

[53] In addition to the refund order, I also impose interest at the rate of 5% per annum on the amounts of rates to be refunded by the respondent to the appellant ("sums") for the following periods of time:

(i) from the dates of payments of the sums by the appellant to the respondent until

(ii) the date of full refund of the sums by the respondent to the appellant ("interest order").

[54] The interest order is made pursuant to s. 11 of the Civil Law Act 1956 ("CLA") and O. 42 r. 12 RC. I reproduce below s. 11 CLA and O. 42 r. 12 RC:

> *Power of Courts to award interest on debts* and damages
>
> *s. 11 In any proceedings tried in any Court for the recovery of any debt* or damages*, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest as such rate as it thinks fit on the whole or any part of the debt* or damages *for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:*
>
> Provided that nothing in this section:
>
> (a) shall authorise the giving of interest upon interest;
>
> (b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
>
> (c) shall affect the damages recoverable for the dishonour of a bill of exchange.
>
> *Interest on judgment debts*
>
> O 42 r 12 RC Subject to rule 12A, except when it has been otherwise agreed between the parties, *every judgment debt shall carry interest at such rate as the Chief Justice may from time to time determine or at such other rate not exceeding the rate aforesaid as the Court determines, such interest to be calculated from the date of judgment until the judgment is satisfied.* (emphasis added)

[55] When the court makes a refund order, the sums constitute:

(i) a "debt" within the meaning of s. 11 CLA; and

(ii) a "judgment debt" as understood in O. 42 r. 12 RC.

In view of the above reasons, this court is empowered under s. 11 CLA and O. 42 r. 12 RC to make the interest order.

Costs

[56] The appellant has partially succeeded in this appeal. As such, I exercise my discretion to award only half the costs of this appeal in an amount of RM15,000 in favour of the appellant ("costs sum"). Pursuant to O. 59 r. 24 RC, I order interest at a rate of 5% per annum to be paid by the respondent to the appellant on the costs sum from the date of oral decision of this appeal until the respondent's full payment of the costs sum.

Court's Decision

[57] A summary of the above decision is as follows:

(i) the first limb of the definition of "annual value" in s. 2 LGA applies to the appellant's land;

(ii) the respondent has no duty under the second part of s. 4(2)(b) VAEAPM to obtain DG's valuation of the "annual value" of appellant's land within the meaning of the first limb. Consequently, the court cannot draw an adverse inference under s. 114(g) EA against the respondent for not obtaining DG's valuation of the annual value of the appellant's land as understood in the first limb;

(iii) the revised valuation list is void for non-compliance with the mandatory requirement of s. 137(3) LGA. As such, the first question is answered as follows – the annual value of the appellant's land is zero;

(iv) s. 157 LGA (concerns "rates" and "assessment") does not apply to "annual value" and "annual rate" of the appellant's land;

(v) the appellant is entitled to file this appeal under s. 142(1)(b) read with s. 145(1) LGA on the ground that the appellant's land is not rateable because the revised valuation list is invalid due to a breach of s. 137(3) LGA;

(vi) the respondent has a statutory duty under LGA to collect rates from the appellant and the appellant has a statutory duty under LGA to pay rates to the respondent. The LGA does not provide that the respondent can only charge rates on the appellant when the respondent has provided a particular service, facility or amenity to the appellant and/or appellant's land;

(vii) there is no evidence to show that the respondent has exercised unlawfully its discretion (pursuant to ss. 127, 129, 130(1) and (2)(a) LGA) to fix 2.5% as the annual rate for the appellant's land. On the assumption that the annual value of the appellant's land is RM168,000, 2.5% is the annual rate applicable to the appellant's land;

(viii) the respondent has not misused LGA to commit fraud on the appellant;

(ix) the appellant has discharged the legal and evidential burden to satisfy the court that this appeal should be allowed because the revised valuation list has not complied with s. 137(3) LGA; and

(x) in the interest of justice, the court makes a refund order. The interest order is made pursuant to s. 11 CLA and O. 42 r. 12 RC.